INFORMATION SHEET G058v08
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Ownership of Copyright

This information sheet is for people who want to know who owns copyright in an item of copyright material. To identify the current copyright owner, you may need to identify the first copyright owner, then trace any transfers of title by that owner and subsequent owners.

For information about how to find a copyright owner, see our information sheet *Permission: How To Get It.* For information on how registering a "security interest" may impact on rights in copyright material see our information sheet *Personal Properties Securities Act (PPS Act) and Copyright.* For general information on what is covered by copyright, and the rights of copyright owners, see our information sheet *An Introduction to Copyright in Australia*.

For information about our other information sheets, publications and training program, visit our website www.copyright.org.au

We update our information sheets from time to time. Check our website at www.copyright.org.au to make sure this is the most recent version.

The purpose of this information sheet is to give general introductory information about copyright. If you need to know how the law applies in a particular situation, please get advice from a lawyer.

Key points

- The creator of copyright material is not necessarily the copyright owner.
- If there is an agreement specifying who owns copyright this will take precedence over the ownership provisions set out the Copyright Act.
- In some instances there may be more than one copyright owner.
- Ownership of copyright is separate from ownership of the physical item. Buying a picture, book, photograph or CD does not give you rights to copy it.
- Creators of copyright works have moral rights in relation to what they create, whether or not they are the copyright owner. For more details, see our information sheet *Moral Rights*.

Different rules for old material

There are differences in the rules about ownership of material made **before 1 May 1969** (the date the present Copyright Act commenced) and material made after that date. In this information sheet, we focus on ownership of copyright in material made **on or after 1 May 1969** (although we do note the most common differences).

Agreements about who will be the first owner of copyright

If there is an agreement specifying who is the owner of copyright in material, the terms of the agreement will apply. It is common for people involved in creating copyright material to enter into agreements about who will own the rights when the material is created – for example, songwriters

often make agreements with music publishers that the music publisher will be the owner of copyright in all future songs, in return for an agreed percentage of the income from the songs.

In some cases, agreements relating to who will own copyright must be in writing and signed by the copyright owner. Even when it is not a legal requirement, it is always a good idea to put agreements in writing. If there is no agreement about who will own copyright, you need to work out who is the copyright owner by looking at the general rules on ownership, which are set out in the Copyright Act.

For more information about agreements about copyright material, see our information sheet *Assigning and Licensing Rights*.

The owner of an object is not necessarily the owner of copyright

Copyright ownership is not the same as ownership of the physical article – such as a painting, sculpture, manuscript or transparency – in which the copyright is embodied. For example, an art gallery may not own copyright in a painting in its collection; the National Film and Sound Archives may not own copyright in a film in its collection.

The owner of an object may, however, be entitled to charge a fee for access to the object or to impose other conditions on use. If you want to reproduce copyright material (for example, by photographing or filming it), you will usually need a separate permission from the copyright owner.

The general rule: the "author" is usually the first owner of copyright

The general rule is that the "author" is the first owner of copyright if the work is a text work, music, a dramatic work, a computer program or an artistic work (such as a drawing).

For the purposes of copyright law, an "author" is a person who creates the work, for example, writing an instruction manual, or drawing graphics, or writing a computer program. For photographs, the author is the person who takes the photograph.

A person who contributes ideas or information or suggestions, but does not contribute to the expression of a work, is not considered to be an "author" for the purposes of copyright.

The Copyright Act also provides that works may be jointly owned, when they are produced by two or more authors and the contribution of each author cannot be distinguished.

The general rule that the author is the first owner of copyright may not apply if:

- the author has signed a document which says that someone else will own copyright;
- the author was an employee (rather than a freelancer or volunteer) and created the work as part of his or her usual duties;
- the work is a commissioned photograph, portrait or engraving;
- the work was made by, or under the direction or control of, the Commonwealth Government, or a State or Territory government; or
- the work was first published by, or under the direction or control of, the Commonwealth Government, or a State or Territory government.

(Note, that the special rules relating to government direction or control do **not** apply to local councils and may not necessarily apply to statutory bodies).

Employees

The terms of the employment agreement will usually set out what the employer and employee have agreed in relation to ownership of copyright material made by the employee. If the

employment agreement does not address copyright ownership, the rule is that the employer will be the first owner of copyright in any works created by an employee in the course of their employment. This requires that:

- The creator of the work must be an employee rather than a freelancer or independent contractor; and
- The copyright material must have been created as part of the duties that the person is employed to carry out.

This is a complex area of copyright law, and these distinctions depend on the facts of each case. There are a number of factors that a court may consider in determining whether or not someone is an employee. For example: does the employer deduct PAYG tax? Are holiday, sick leave and other benefits provided? Does the role involve a high or low level of autonomy in relation to how and when the work is to be made, and the level of supervision provided?

Even if the person is an employee, the material must have been created as part of their duties as an employee. It is important to note that something will not necessarily fall outside an employee's duties merely because it took place outside normal working hours or outside the specific duties of the employee set out in an employment agreement.

Employees of newspaper and magazine proprietors

Where people employed by publishers of newspapers, magazines or other periodicals create copyright material as part of their jobs, certain rights in the material are divided between the employees and the employers (unless they have agreed to the contrary). This may be relevant not only to journalists but also to photographers taking shots for the publication that employs them.

Copyright in works created by employed journalists and photographers **before 1 May 1969** is owned solely by the employer (unless there is an agreement to the contrary). However, in this case, the journalist has a right to restrain the publication of the work other than in a newspaper, magazine or similar periodical if the work was created for that purpose.

For works produced by employed journalists and photographers **on or after 1 May 1969 and before 30 July 1998**, the newspaper or magazine proprietor owns the rights for certain specific purposes including publication in any newspaper, magazine or similar periodical (unless there is an agreement to the contrary). The journalist generally owns the rights for all other purposes, including photocopying and book publication.

For works created **on or after 30 July 1998**, the author owns copyright for the purposes of book publication and photocopying, and the proprietor owns copyright for all other purposes, including publishing in newspapers and magazines, broadcasting and electronic publication (unless there is an agreement to the contrary).

Freelance journalists and photographers

Subject to the comments below relating to commissioned photographs, freelance journalists and photographers will usually own copyright in the work they create and subject to any contract they have with the publisher. Where material was created by a freelancer, or was re-published from another source, the publisher may be able to authorise use of the material. The publisher is more likely to be entitled to authorise the use of photographs commissioned from freelancers than other material.

Commissioned photographs

Where a **photograph** was commissioned **before 30 July 1998**, the client is the owner of copyright unless there was an agreement to the contrary. For photographs commissioned **after 30 July 1998**, the photographer is the owner of copyright except if the photograph was commissioned for a

private or domestic purpose. If the photograph was commissioned for a private or domestic purpose, for example, a family portrait, the client owns copyright, unless there is an agreement to the contrary. Where an artist is commissioned to create a photograph, portrait or engraving for a particular purpose, and the client owns copyright in the commissioned work, the artist may stop the work being used for any other purpose.

Other commissioned works

For other commissioned works—such as music and text—the commissioning agreement may set out what the parties have agreed in relation to ownership of copyright material made under the commission. If there is no agreement in place, or the agreement does not address copyright ownership, the general rule applies and the creator will own copyright. However, the client is usually entitled to use the work for the purposes for which it was commissioned.

Films & videos

The first owner of copyright is the person or company which made the arrangements for the making of the film. Otherwise, if a person agrees to make a film or video for you in return for payment or some other "valuable consideration", you own the copyright in the film or video unless you make some other agreement about ownership of copyright.

Note that the copyright in the film or video only relates to the moving images and sound – works incorporated into the film or video, such as the screenplay and the music, must be considered separately. For example, if you commission the making of a video, and you have no agreement about who will own copyright, you will own copyright in the moving images and sounds, but not in the screenplay or the music.

For further information see our information sheet *Film & Copyright*.

Sound recordings

The first owner of copyright is the "maker" of the sound recording. However, where the sound recording was made in pursuance of an agreement for "valuable consideration", the person who pays owns copyright.

The "maker" is typically the person or company who owns the equipment on which the first recording is made, but will also include the performers where the sound recording is of a live performance **made on or after on 1 January 2005**.

Performers have very limited rights in relation to recordings **made before 1 January 2005**, and unless they reached some agreement in relation to ownership of copyright at the time, are not entitled to exercise these rights where this would interfere with the rights of those who already owned copyright in those sound recordings.

Even for recordings **made on or after 1 January 2005**, performers' rights are likely to be very limited in practice. In particular, unless the performer reaches an agreement assigning all or part of the future copyright to him or her, a performer does not own a share in the copyright in the sound recording if:

- the performance was given in the course of his or her employment; or
- the recording was commissioned (for example, a record company engages a production studio to produce a master recording).

Note also that, as with films and videos, different provisions apply to any works recorded on the sound recording – such as music and lyrics. For example, if you commission the making of a CD, and you have no agreement about who will own copyright, you will own copyright in the sound recording but not in the music or the lyrics.

For further information see our information sheets *Music & Copyright* and *Performers' Rights*.

Government

Under the Copyright Act, a government owns copyright in works created by it, or under its direction or control; or first published by it, or under its direction or control. This may be modified by agreement between the parties.

For further information see our information sheet *Government: Commonwealth, State & Territory*.

Frequently Asked Questions (FAQs)

How do I prove that I am the copyright owner if there is no system of registration?

If there is a dispute about who created a copyright work which cannot be resolved by negotiation, it may need to be resolved by a court. A court considers all the relevant evidence when determining a dispute. The most important evidence is usually the creator's and the evidence of witnesses to the creation of the work. Other evidence may include drafts of the work. Such cases are extremely rare: someone else alleging they own copyright generally runs large financial risks in bringing such a case without any basis. In addition, a person who gives false evidence in court is committing perjury (a criminal offence).

If I write a book based on someone else's idea, who owns the copyright?

The first owner of copyright is usually the "author". The "author" of a book is the person who writes it. A person who provides suggestions or ideas, but does not do any of the writing, is not an "author" or copyright owner.

What is the difference between an author and a copyright owner?

An author is the person who creates a work. An owner of copyright is the person, or company, which owns the rights in the work. The author and the owner are not necessarily the same person. For example, an employee may be the author of a work but his or her employer is likely to be the owner of copyright in it. Also, the author may have been the first owner of copyright, but may have transferred the copyright to someone else who is now the owner of copyright.

Can copyright be jointly owned?

Yes. This can happen in two ways:

- there may be joint authors of a work – that is, two or more authors have made contributions to the creation of the one work;
- there might be an agreement that copyright will be jointly owned, whether or not the contributions are joint. For example, some bands decide that everyone in the band will jointly own copyright in all music and lyrics created by band members, even though all the band members may not be joint authors of each piece of music and lyrics.

Does the owner of a memory card own the digital images contained on it?

The fact that a person owns a memory card on which photos have been saved does not, of itself, mean that the person is the owner of the copyright as well. The first owner of copyright in a photo is typically the person who took the photo. Merely owning the memory card is ownership of the physical item. This is not necessarily the same as copyright ownership. In some cases, one person can be the owner of copyright (and have the right to reproduce the image) and another person can be the owner of memory card on which the image is stored.

Does a person who applies a digital watermark own copyright?

Not necessarily. If the person did not create the material or copyright has not been transferred to them, either by agreement or under the copyright ownership provisions (for example, because a

photograph was commissioned and there was no agreement about copyright ownership with the client), putting the notice on the material will not, of itself, transfer copyright to the person.

FAQs about creators working on commission

How do I avoid having disputes about ownership of copyright with my clients?

Often clients believe that they own copyright in anything they pay to be created, whereas this is not always the case. To avoid disputes about ownership of copyright, it is a good idea to have a written agreement which clearly states who will own copyright in any material your client pays you to create and, if you own the copyright, what your client is entitled to do with that material. For more information, see our information sheet *Assigning and Licensing Rights*. Other information sheets that address this topic include *Photographers & Copyright* and *Graphic Designers & Copyright*.

I wrote a training manual for a government department. Do I own copyright?

Unless there is an agreement dealing with copyright between you and the government, the government will own copyright if the work was made, or was first published, under its direction or control. For more information, see our information sheet, *Government: Commonwealth, State & Territory.*

Who owns copyright in photographs I have taken for a client?

If you have made an agreement with the client, you should first check this agreement. If there is no agreement, you will have to look at the general rules.

If the photograph was taken **before 30 July 1998**, unless you and the client have agreed that you will own copyright, the client will own copyright if he or she agreed to pay for the taking of the photograph, even if the payment has not actually been made. If the photograph was taken **after 30 July 1998**, you will own copyright, unless the photograph was commissioned for a private or domestic purpose and there was no agreement about ownership of copyright, in which case the client will own copyright.

Who owns copyright in a commissioned computer program?

In the first instance, check the commissioning agreement to determine who owns copyright. If there is no agreement about who owns copyright:

- and the program was created by an independent contractor, that person would own copyright;
- and the program was created by an employee of a company in the course of their employment, the company would own copyright;

In most cases, a commissioning party which does not own copyright is nevertheless entitled to use the program for the purposes for which it was commissioned.

FAQs about paying for the creation of copyright material

I have commissioned a graphic artist to create a logo. Do I own the copyright?

Unless the artist has signed a written document stating that you are the owner of copyright, the artist owns copyright, but you would usually be entitled to use the logo for the purposes for which it was created. If you want to use the logo for another purpose, you will probably need the artist's permission.

If I pay someone to put music I have composed into musical notation, who owns the copyright?

Copyright in a piece of music is usually first owned by its "author". The "author" is usually the person who first records the music in some way, for example, writes it down. However, a person

who merely writes out music played, sung or recorded by someone else is not an author, if all that that person does is write out the other person's creation exactly.

If I pay someone to arrange music I have composed, who owns the copyright?

The first owner of copyright in a musical arrangement is usually the arranger. If you paid for the arrangement and did not obtain an assignment of copyright from the arranger, you would usually be entitled to use the arrangement for the purposes for which it was commissioned (for example, to perform or to make a recording), but you would need the arranger's consent to use it for any other purpose (for example, to use it on a film soundtrack). The arranger would usually need your permission to use the arrangement for any purpose. That is because you own the copyright in the underlying composition. As with any other situation where more than one person is involved in creating new material, it is a good idea to have a written agreement about who owns copyright and what each person can do with the work.

FAQs about work created by employees or volunteers

Does a company own copyright in resources, such as databases, created by an employee?

Generally, a company owns copyright in copyright material created by an employee, provided:

- the author is an employee, not an independent contractor or freelancer; and
- the work is created as part of that person's job.

If there is any doubt about either of these factors, it is a good idea to have a written agreement which clearly sets out who is the copyright owner.

Does an organisation own copyright in material created by volunteers?

Usually, volunteers retain copyright in material such as reports, logos and so on that they create. Generally, the organisation will have the licence, or permission, to use the relevant material for the purposes for which it was created.

A person who has been **paid** to create something protected by copyright is unlikely to be in a position to revoke the commissioning party's use of the material for the purposes for which it was created. However, a **volunteer** may be able to revoke permission for the organisation to continue to use the copyright item (for example, to stop using a logo). Organisations concerned about this should get specific legal advice, and should consider entering formal agreements with volunteers.

FAQs about partnerships

Who owns copyright in a computer program created during a partnership?

Generally, a program created by a partner for use in the business may be used by other partners for the purposes of the partnership. However, if the partnership is dissolved, it may be necessary to decide whether the copyright in the program is a partnership asset or whether the true arrangement was that the partners merely had a licence to use it while the partnership existed. If you are in this situation, you should get legal advice, preferably before the partnership is formed, so that the matter may be dealt with in a written agreement.

Further information

For further information about copyright, visit our website, www.copyright.org.au

A Copyright Council lawyer may be able to give you free legal advice about an issue not addressed in an information sheet. This service is primarily for professional creators and arts organisations, but it is also available to staff of educational institutions and libraries. For further information about the service, see http://www.copyright.org.au/legal-advice/

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About Us

The Australian Copyright Council is an independent, non-profit organisation. Founded in 1968, we represent the peak bodies for professional artists and content creators working in Australia's creative industries and Australia's major copyright collecting societies.

We are advocates for the contribution of creators to Australia's culture and economy; the importance of copyright for the common good. We work to promote understanding of copyright law and its application, lobby for appropriate law reform and foster collaboration between content creators and consumers.

We provide easily accessible and affordable practical, user-friendly information, legal advice, education and forums on Australian copyright law for content creators and consumers.

Australian Government

The Australian Copyright Council has been assisted by the Australian Government through the Australia Council, its arts funding and advisory body.

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